IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6746 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRESIDENT ALL GUJARAT KAMDAR KARMACHARI UNION

Versus

STATE OF GUJARAT

Appearance:

MR IA PATEL for Petitioner

Mr. HH Patel for the respondents No. 1 to 3.

Mr. AM Raval for respondents nos. 4 to 6.

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 20/04/2000

ORAL JUDGEMENT

Heard thelearned advodate Mr.I.A.Patelfor the petitioner and Mr.HH Patel for the respondents.

In this petition, the petitioner has challenged the order passed by the appropriate Government while exercising the powers undersection 12(5) of the ID Act,1947. Said order is at page 10 of the petition. The dispute raised by the petitioner union has been decided not to refer for adjudication on theground that the demand raised by the union is administrative in nature and therefore same isnot required to be referred to the appropriate forum for adjudication.

The dispute which was raised by the petitioner union was in respectof illegal change which has beenmade by the Ahmedabad Municipal Corporationwhile issuing notice under section 9(A) dated 25.11.1988. Saidnotice was gtiven by the corporationfor changing service conditions of the concerned employee which was objected by the petitioner union and has raised dispute against such alleged illegal change. Therefore, insuch circumstances, the dispute raised by the union cannot be said to be of an administrative nature. Therefore, in view of these facts, the appropriate Government has commited gross error in coming to such conclusion that the dispute raised by the union is administrative in nature and, therefore, it should not be referred to for adjudication before the appropriate forum under the ID Act. While examining the question as to whether the industrial dispute is required to bereferred to for adjudication or not, it is the duty of the appropriate Government to see as to whether the dispute is existing ornot. Such limited inquiry is permited under the statutory provisions of law. While examining such question, it is not open for the appropriate Government to enter into themerits of the dispute. The law, in this regard, is settled by the apex court as per the decision in caseof Telco Convoy Drivers Mazdoor Sangh and another versus State of Bihar and Ors. reported in AIR 1989 SC 1565. Therefore, in view of the principles laid down by the apex court in case of Telco (supra), the impugned order passed by the apppropriate Govoernment is required to be quashed and set aside and the appropriate Government is required to be directed to reconsider the issue and take appropriate decision in accordance with law in respectof the industrial dispute raised by the petitioner union.

Accordingly, this petition is allowed. The impugned order dated 23.5.1990 passed by the appropriate Government (page 10) is quashed and set aside. The appropriate Government is directed to take appropriate decision in accordance with law in respectof the industrial dispute raised by the petitioner union within

two months from the dateof receiptof copy of this order. It is expected that the apropriate Government will take the appropriate decision in respectof the industrial dispute raised by the petitioner union while keeping in view the principles laid down by the apex court in case of Telco (supra). Rule is accordingly made absolute with no order as to costs.

20.4.2000. (H.K.Rathod,J.)

Vyas